

BILL ANALYSIS

C.S.H.B. 1067

By: Murphy

Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 212.014, Local Government Code, allows the recording of a replat of a subdivision or part of a subdivision without vacating the original plat (commonly referred to as a partial replat) if the replat, among other requirements, does not attempt to amend or remove any covenants or restrictions. For twenty-three years, the City of Houston allowed partial replats to remove or change building setback lines.

In July 2006, the Houston Planning Commission changed its interpretation of the term “covenants or restrictions” to now include building setback lines shown on a plat. Because of this interpretation, the Houston Planning Commission is currently disapproving all partial replats that change or remove building setback lines unless all owners of property covered by the original plat sign the replat. This restricts redevelopment, because getting the signature of all owners of property shown on the original plat is usually a practical impossibility.

The purpose of C.S.H.B. 1067 is to authorize the recording of a replat that becomes controlling over the preceding plat without vacating the preceding plat in certain areas of the state and under certain new conditions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. *Amends Chapter 212, Local Government Code, by adding Section 212.0146, as follows:*

The new Subsection 212.0146(a), Local Government Code, makes the new Section applicable to a replat of a subdivision or a part of a subdivision located in a municipality or the extraterritorial jurisdiction of a municipality with a population of 1.9 million or more.

The new Subsection 212.0146(b), Local Government Code, authorizes a replat of a subdivision or part of a subdivision to be recorded and provides that it is controlling over the preceding plat without vacation of the plat if the following requirements are met: the replat is signed by each owner of property subject to the replat and the replat is approved by the municipal authority responsible for approving plats after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard and the replat does not attempt to amend or remove any covenants or restrictions that are contained or referenced in a dedicatory instrument recorded in the real property records separately from the preceding plat or replat and the replat does not attempt to amend or remove any covenants or restrictions that are contained only in the preceding plat or replat without reference in any dedicatory instrument recorded in the real property records separately from the preceding plat or replat, unless the municipal authority responsible for approving plats determines under the criteria in its applicable rules that the restrictions or covenant should be amended or removed and the replat does not attempt to amend or remove

any existing public utility easements without the consent of the affected utility companies.).

The new Subsection 212.0146(c), Local Government Code, provides that Section 212.015(a) and (b), Local Government Code do not apply to a replat under the new Section 212.0146, Local Government Code.

SECTION 2. Amends Sections 212.015(a) and (b), Local Government Code, to make conforming changes.

SECTION 3. Validates certain acts and proceedings, as follows:

Provides that this section applies only to a municipality with a population of 1.9 million or more that approved the replat or attempted replat of a subdivision or a part of a subdivision before the effective date of this Act.

Provides that the governmental acts and proceedings of the municipality relating to the approval of a replat or attempted replat of a subdivision or a part of a subdivision by the municipality are validated as of the dates they occurred, and that the acts and proceedings may not be held invalid because they were not performed in accordance with Chapter 212, Local Government Code, or other law.

Provides that the governmental acts and proceedings of the municipality occurring after a replat or attempted replat of a subdivision or a part of a subdivision by the municipality may not be held invalid on the ground that the replat or attempted replat, in the absence of this section, was invalid.

Provides that this section does not apply to any matter that on the effective date of this Act: (1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or (2) has been held invalid by a final judgment of a court.

SECTION 4. Effective Date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

GENERALLY. The Committee Substitute was prepared to address concerns raised by the City of Houston and CenterPoint Energy. The City requested that any covenants or restrictions not be amended or removed by a replat unless the City Planning Commission determines under its applicable rules that the restriction or covenant should be amended or removed. CenterPoint Energy requested confirmation that no utility easement could be amended or removed without the consent of the affected utility company. Both of these concerns are addressed in SECTION 1 of the Committee Substitute.

SECTION 1. The Original changes in SECTION 1 to Section 212.014, Local Government Code, are removed in the Committee Substitute, and the Committee Substitute SECTION 1 makes similar changes by adding a new Section 212.0146, Local Government Code. The Committee Substitute states in Subsection (b)(4) that restrictions or covenants may not be amended or removed unless the municipal authority responsible for approving plats approves pursuant to criteria in its applicable rules, states Subsection (b)(5) that existing utility easements may not be amended or removed without the consent of the affected utility companies, and states

in Subsection (c) that Section 212.014, the existing partial replat statute, does not apply to replats under Section 212.0146.

SECTION 2. The Original SECTION 2 is moved to SECTION 3 of the Committee Substitute. The Committee Substitute SECTION 2 makes conforming changes.

SECTION 3. The Original SECTION 3 is moved to SECTION 4 of the Committee Substitute. The Committee Substitute SECTION 3 contains language from the Original SECTION 2.

SECTION 4. The Original contains no SECTION 4. The Committee Substitute SECTION 4 contains language from the Original SECTION 3.